

MADISON COUNTY PLANNING

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Streamside Protection Steering Committee Meeting Summary

Tuesday February 24, 2009

First Madison Valley Bank, Basement Meeting Room, Ennis, MT

Attendance:

Planning Staff: Jim Jarvis (staff planner), Karen Filipovich (facilitator)

Steering Committee: Richard Lessner, Donna Jones, Gayle Schabarker, Pat Clancy, Chris Murphy, Amy Robinson, Jeff Laszlo, John East, Kelly Galloup.

Public (14):

Carol East

Arcylle Shaw

Janice Carmody

Duane Thexton

Susan Hourany

Janet Endecott

Dick Vanderheyden

Dennis Hourany

John Scully

Greg Morgan

Pat Goggins

Karen Shores

Terry Cameron

Scott Christensen

1. Welcome, Overview, and Introduction

The meeting was called to order at 6:30 p.m. by Karen Filipovich. Karen presented an overview of the agenda. Introductions were exchanged amongst committee members and the public.

2. Receive January 27, 2009 meeting summary and correspondence submitted since the last meeting

Jim Jarvis directed the committee's attention to a summary of the last meeting and copies of public comments received by the Planning Office since the last meeting. Jim Jarvis reviewed the main points from the meeting summary. Jim then described the various handouts and supplemental materials included in the committee packets.

3. Performance-based Streamside Protection Ordinance

Karen Filipovich directed the committee's attention to the Mark-up version of the draft ordinance dated 1/27/09 included in the packets and distributed to the committee by email. A Mark-up version of the ordinance will be created after each committee meeting to reflect the committee's recommended changes. The Mark-up document is intended to facilitate tracking of changes within a section. Upon completion of major sections, a revised Working version of the draft ordinance will be prepared. The meeting summaries and the Working versions of the draft ordinance, posted to the county website, will serve as a permanent record of the evolution of the ordinance.

Jim Jarvis provided an overview of specific items identified on the agenda.

Authority (Section 2) – Jim Jarvis reported that a legal opinion regarding the proposed General Authority statute is on-hold pending the outcome of new streamside protection legislation currently

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being considered at the state-level. Two legislative bills that could impact the proposed draft ordinance were briefly discussed.

Greg Morgan (audience member) provided an overview of a recent legal conference in Montana where the subject of the limitations of the General Authority statute were discussed.

Revisit Fixed-Width Setbacks (Section 6, Part B) - Karen Filipovich led the committee in a review of how the fixed width setbacks of 50 feet on the Madison and the Jefferson Rivers and 25 feet on tributaries came to be in the current draft of the ordinance. These setbacks represented the committee's early efforts to strike a balance between public and private property rights based on available scientific data. Jim gave an overview of the science of setbacks data that has been presented to the committee. In the absence of site-specific studies for the planning area, setbacks in the 15-100 foot range are commonly referenced in the literature as minimum best management practices to protect water quality. These same studies generally recommend larger setbacks when steep slopes or diverse riparian habitat resources are present. Karen then asked the committee, based on what's been discussed and concerns raised, whether the 50 foot and 25 foot setbacks, in combination with the previously discussed secondary variable setbacks, are adequate to advance the expressed goals of the ordinance - water quality and riparian habitat protection?

The committee discussed the strengths and weaknesses of the various studies and expressed concern over the absence of "local" data to guide these setback restrictions. Committee members were generally divided upon whether a 50 or a 100 foot setback was appropriate. The importance of a long-term perspective on future growth impacts and respect for private property rights, coupled with education on Best Management Practices (BMPs), was stressed by several committee members.

When prompted by Karen whether the proposed secondary setbacks lessened the need for a larger fixed-width setback, some committee members expressed concern about the County's ability to implement such a program effectively. Jim admitted there will be circumstances when the need for a secondary setback will be challenged by the property owner, resulting in a request for a variance, or an appeal of a setback permit denial. The same is true of any regulation, if not fairly and reasonably implemented. The County will have to make a strong case for a larger setback based on the ordinance and supporting scientific data. The existing septic permit program illustrates that the County is capable of effectively implementing such a program even with limited staff and technical resources.

Jeff Laszlo and Pat Clancy expressed support for the 50/25 foot fixed-width setback, if the County agreed to commit the financial and technical resources to implement an effective secondary performance-based setback program.

In response to Richard Lessner concerns about the impacts of development along smaller tributaries and the perceived need for setbacks larger than 25 feet in these areas, Karen asked for committee input. Kelly Galloup agreed that a larger setback, e.g. 50 feet on the tributaries was appropriate.

Karen polled the committee for their individual thoughts on setbacks. Most committee members agreed that a 50 foot setback on tributaries was appropriate. The committee was still divided along 50, 75, or 100 feet for the appropriate setback for the Madison and Jefferson Rivers. In regards to the Jefferson River, several committee members were undecided about the

appropriate setback, citing a lack of information and differing conditions. Karen agreed to tabulate the committee's responses for review at the next meeting.

4. Next Meeting Agenda

The committee scheduled the next meeting for Tuesday March 10, 2009 at 6:30 PM in Ennis. The committee agreed to make a final decision on Section 6 - General Standards, specifically the size of the fixed-width buffer zone. The next sections for review include Exhibit C Checklist – Performance-based environmental criteria, Section 8 - Special Conditions and Section 11 - Exceptions of the ordinance. An updated version of Section 8 was provided to the committee within the 1/27/09 Mark-up draft of the ordinance.

Jim Jarvis agreed to prepare the following:

- a. Exhibit C checklist with specific water quality and riparian habitat criteria*

5. Public Comment

- The ordinance is biased and discriminating toward residential development. Why aren't the impacts of agriculture being considered? Committee response: The committee was tasked with creating an ordinance to "Close the loophole" relating to residential development outside of subdivision regulations.
- Agriculture is trying to take care of the land. Agriculture helped create the conservation district program to address the impacts of agriculture.
- In terms of the proposed secondary performance-based setback, identifying riparian habitat will be very difficult. Riparian resources are very complex, especially in the Jeffers area.
- It's unfair that development in Ennis will not be impacted by this regulation.
- Give property owners the benefit of the doubt and adopt the minimum setback necessary to achieve the set goals. A 50 feet setback is reasonable based on the scientific data available.
- Use common sense and judgment to arrive at a fixed setback. Avoid a subjective performance-based process that will be burdensome, expensive, and most likely ineffective.
- The science does not support the conclusion that there is a water quality problem in the Madison Valley, today.

Meeting adjourned: 8:56 pm

The next committee meeting is scheduled for Tuesday March 10, 2009 - 6:30 p.m. Ennis.